

Quick Reference

Unclaimed Property Act of 2004

(Uniform Disposition of Unclaimed Property Act of 2004)

The following provides a quick reference to the unclaimed property law of the State of Alabama. It is intended as a summary of the law and is not meant to alter, revise, amend or omit the law or any section thereof. The reader should refer to the entire code section for full detail and understanding of this law, its sections, intent and instructions.

➤ 35-12-70: Short Title

The article may be cited as the Uniform Disposition of Unclaimed Property Act of 2004.

➤ 35-12-71: Definitions

Definitions of apparent owner, business association, domicile, financial organization, holder, insurance company, mineral, mineral proceeds, owner, person, property, record, rules, state, treasurer and utility.

➤ 35-12-72: Presumption of Abandonment

Property is presumed abandoned if it is unclaimed by the apparent owner within the time set forth as described in this code section. This section provides specific dormancy periods based on given property types.

➤ 35-12-73: Exemptions

This section specifically exempts the following entities and property types from unclaimed property reporting requirements:

- Electric cooperatives organized under Chapters 6 & 7 of Title 37
- Incorporated municipalities and incorporated municipal boards, counties and county boards of this state
- Gift certificates, gift cards, or in-store merchandise credit issued or maintained by any person engaged primarily in the business of selling tangible personal property at retail
- Property held, due, and owing in a foreign country and arising out of a foreign transaction

➤ 35-12-74: Rules For Taking Custody

Property that is presumed to be abandoned, whether located in this state or another, is subject to the custody of this state if it meets any one of seven conditions outlined within this section.

➤ **35-12-75: Dormancy Charges**

Section (a) Any person who is engaged primarily in the business of selling tangible personal property at retail by contract with the customer may charge and deduct from the property a reasonable administrative and restocking fee of not more than twenty-five dollars (\$25.00) with respect to items purchased under layaway or similar agreement, the terms of which are not fulfilled by the customer and the items are returned to inventory.

Section (b) A holder may deduct from property presumed abandoned a charge imposed by reason of the apparent owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the apparent owner under which the holder regularly imposes the charge. The amount of the deduction is limited to an amount that is not unconscionable.

➤ **35-12-76: Report of Abandoned Property**

Any holder of property presumed abandoned shall make a report to the Treasurer concerning the property. The report must be verified and must contain, at a minimum, all of the information designated under Section 35-12-76. The report shall be filed (or a requested extension granted) before November 1 of each year and cover the 12 months next preceding July 1 of that year. The holder of the property presumed abandoned shall send written notice to the apparent owner, not more than 120 days or less than 60 days before filing the report, stating that the holder is in possession of property subject to this article, if all of the requirements indicated within this section are met.

➤ **35-12-77: Payment or Delivery of Abandoned Property**

Remittance to this state shall occur annually on or before November 1 and shall accompany the report provided for in Section 35-12-76(c).

- Except for property held in a safe deposit box or other safekeeping depository, upon filing the report, the holder of the property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the Treasurer the property described in the report. If the property is an automatically renewable deposit, and a penalty or forfeiture of interest would result, the time for compliance is extended until the penalty or forfeiture would no longer result.
- Tangible property held in a safe deposit box or other safekeeping depository shall be delivered to the Treasurer within 120 days after filing the report
- If the property reported is a security or security entitlement under Article 8 of Title 7 of the Uniform Commercial Code, the Treasurer is an appropriate person to make an endorsement, instruction, or entitlement order on behalf of the apparent owner to transfer or dispose of the security or entitlement
- If the holder of property reported is the issuer of a certificated security, a replacement certificate may be obtained without an indemnity bond
- Any issuer, holder, transfer agent, or other person acting on behalf of the issuer or holder within this section is indemnified against claims by the owner

➤ **35-12-78: Notification of Abandoned Property**

The state has an obligation to make an effort to notify apparent owners of abandoned property in a cost-effective manner. Thus, the Treasurer shall make at least one active attempt to notify apparent owners of abandoned property held within 12 months of receipt by mailing a postcard notification to the apparent owner which contains all information required by this section. The Treasurer is not required to attempt notification to apparent owners when the property has value less than fifty dollars (\$50.00) or concerns travelers checks, money orders, or similar instruments that have no reported name or address.

➤ **35-12-79: Custody By State; Recovery By Holder; Defense of Holder**

The state assumes custody and responsibility for safekeeping of the property upon payment or delivery of the property to the Treasurer. A holder delivering the property to the Treasurer in good faith is entitled to the relief of liability arising thereafter with respect to the property. This section does not relieve the holder from any fine or civil penalty imposed pursuant to Section 35-12-92. A holder may, but is not required to, subsequently make payment to a person reasonably appearing to be entitled to payment. Upon filing proof of payment and proof that the payee was entitled to payment, the holder shall be promptly reimbursed unless payment has already been made on a claim for the property. In addition, the holder may reclaim property still in the possession of the Treasurer without fee or charge upon proof that the apparent owner has claimed the property from the holder.

➤ **35-12-80: Public Sale of Abandoned Property**

Except as otherwise provided in this section, within three (3) years of receipt, abandoned property shall be sold to the highest bidder at a public sale. However:

- The Treasurer may decline the highest bid if it is considered to be insufficient
- The property need not be offered for sale if the probable cost of sale will exceed proceeds from the sale

Purchasers take the property free of all claims of the owner or previous holder and of all persons claiming through or under them.

Securities listed on an established stock exchange must be sold upon receipt at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by other method selected by the Treasurer. Claimants are entitled to receive the property delivered if it still remains in the custody of the Treasurer or proceeds from the sale, less any fees and expenses incurred from the sale. No person has any claim under this article against the state, Treasurer, holder, transfer agent, auctioneer, or any person acting on behalf of the holder or Treasurer for any appreciation or depreciation in the value of the property occurring after delivery of the property to the Treasurer.

➤ **35-12-81: Deposit of Funds**

The Treasurer shall promptly deposit all funds received under this article and shall pay claims duly allowed from these deposits. All costs and expenses of administering the program shall be paid from unclaimed property funds. The Treasurer shall deposit any surplus of monies from unclaimed property to the State General Fund on a quarterly basis after the requirements of this section have been met.

➤ **35-12-82: Claim of Another State to Recover Property**

Another state may recover property after the property has been paid or delivered to the Treasurer if:

- The property was delivered to this state because the records of the holder did not reflect the last known location of the apparent owner within the other state or the records of the holder were erroneous
- The property was paid to this state because the laws of the other state did not originally allow for the escheat of the property to the other state
- The property was subjected to custody by this state under subdivision 6 of Section 35-12-74 and the property has become subject to a claim of abandonment by that state
- The property is a sum payable on a travelers check, money order, or similar instrument purchased in the other state and delivered into the custody of this state under subdivision 7 of Section 35-12-74

➤ **35-12-83: Filing and Handling of Claims**

A person who is claiming property paid or delivered to the Treasurer may file a claim. Within 120 days after the claim is filed, the Treasurer shall allow or deny the claim and give written notification of the decision to the claimant. If the claim is denied, a written statement including the reasons for denial will be issued. Within 30 days after a claim is allowed, the Treasurer will pay the property or net proceeds to the claimant. Once property is delivered to the Treasurer, owner is not entitled to receive interest thereafter. The owner is, however, entitled to receive dividends and other increments accruing.

➤ **35-12-84: Filing of a Claim-Intestate and Small Claims**

The surviving spouse, the child, or children of an abandoned property owner who has died intestate may claim property and have a defeasible right to the property if all of the conditions within the section are met. However, nothing in this section shall be construed to remove the jurisdiction of the probate court in the matter of estates.

A person may claim abandoned property in his/her name under this section and will have a defeasible right to the property if all of the following conditions are met:

- The aggregate amount of property held is less than or equal to two hundred dollars (\$200.00)
- The claim is accompanied by an affidavit swearing the authenticity of a claim and lack of matching documentation and authorization to release the name and address of the claimant to subsequent claimants

➤ **35-12-85: Action To Establish a Claim**

A person who is aggrieved by a decision of the Treasurer or whose claim has not been acted upon within 120 days after it was filed may maintain an original action to establish the claim in the Circuit Court of Montgomery County, Alabama as long as the proceeding is brought by the claimant within 90 days of the decision by the Treasurer. The burden shall be upon the claimant to establish entitlement to the property by a preponderance of evidence.

➤ **35-12-86: Election to Take Payment or Delivery**

The Treasurer may decline to receive property deemed to have a value less than the expenses of the notice and sale. A holder, with written consent and upon the terms and conditions described by the Treasurer, may report and deliver property before the property is presumed abandoned and a holder exempt from reporting may voluntarily report.

➤ **35-12-87: Disposition of Property Having No Substantial Commercial Value**

If, after an investigation by the Treasurer, property delivered under this article is determined to have no substantial commercial value, the Treasurer may destroy or dispose of the property at any time.

➤ **35-12-88: Period of Limitation**

The expiration of a period of limitation for the owner to receive and recover property does not preclude the property from being presumed abandoned or affect a duty to file a report or pay, deliver or transfer the property to the Treasurer.

➤ **35-12-89: Request for Reports and Examination of Records**

The Treasurer may require a person to file a verified report in a form specified by the Treasurer if the person has not previously filed a report or has does so in an inaccurate, incomplete or false manner. The Treasurer may examine the records of a person or an agent at reasonable times and upon reasonable notice. Documents and working papers obtained by the Treasurer or other representatives of the Treasurer are not public records but may be utilized by the Treasurer as outlined in this section.

➤ **35-12-90: Retention of Records**

A holder required to file a report under Section 35-12-76 shall maintain the information required in the report for 10 years after the holder has filed the report unless a shorter period is provided by rule of the Treasurer. A business association or financial organization that sells, issues, or provides to others for sale or issue in this state travelers checks, money orders, or similar instruments other than third party bank checks shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three (3) years after the holder files the report.

➤ **35-12-91: Interstate Agreements**

The Treasurer may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The Treasurer may join with another state to seek enforcement against any person who may be holding property reportable under this article. At the request of another state, actions may be taken by the Attorney General of this state to enforce the unclaimed property laws of the other state.

➤ **35-12-92: Penalties and Enforcement**

A holder who fails to report, pay, or deliver property within the time prescribed shall face a civil penalty in the amount of one hundred dollars (\$100.00) for each business day the report, payment, or delivery is withheld, up to a maximum of five thousand dollars (\$5000.00). A holder who willfully fails to report, pay or deliver property shall pay to the Treasurer a civil penalty of five hundred dollars (\$500.00) for each business day, up to a maximum of twenty five thousand dollars (\$25000.00). A holder who makes an intentional fraudulent report shall pay a civil penalty of one thousand dollars (\$1000.00) for each business day, up to a maximum of twenty five thousand dollars (\$25000.00). The Treasurer, for good cause, may waive penalties in whole or in part, and shall waive penalties if the holder acted in good faith.

➤ **35-12-93: Agreement to Locate Property**

An agreement by the owner with the primary purpose of locating, delivering, recovering or assisting in the recovery of property is enforceable only if the agreement is in writing. The agreement must be signed by the apparent owner and must clearly set forth the nature and value of the property before and after any fees or compensation, and the services to be rendered. The agreement is unenforceable if it was entered into during the period of time commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the minerals or any mineral proceeds not yet presumed abandoned, the provision is void and unenforceable. An agreement which provides for unconscionable compensation is unenforceable except by the owner.

➤ **35-12-94: Confidentiality; Staff**

Certain information that is contained in a holder's report to the Treasurer such as Social Security numbers, policy numbers, tangible property descriptions, and property dollar amounts is not considered a public writing and is exempt from the provisions of Section 36-12-40. The Treasurer may adopt rules to carry out this article and may employ the staff necessary to carry out the duties conferred upon the Treasurer pursuant to this article.

➤ **35-12-95: Transitional Provisions**

This article does not relieve a holder of a duty that arose before the effective date of this article to report, pay, or deliver property. An initial report filed that was not required but which is subject to this article must include all items of property that would have been presumed abandoned during the 10-year period next preceding the effective date as if this article had been in effect during that period.

➤ **35-12-96: Uniformity of Application and Construction**

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it. All laws or parts of laws which conflict with this act are repealed.

VERSION 4/2008